

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION, a)	Case No. 16-cv-1054 (DTS)
Delaware corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
FEDERAL INSURANCE COMPANY,)	RESPONSE TO DEFENDANTS’
an Indiana corporation and ACE)	MOTION TO EXCLUDE FICO’S
AMERICAN INSURANCE)	SETTLEMENT AGREEMENTS
COMPANY, a Pennsylvania)	
corporation,)	
)	
Defendants.)	

Defendants moved the Court to exclude settlement agreements between FICO and other companies that breached their Blaze Advisor licenses. (Dkt. 1086.) Defendants seek the exclusion of P-424 (settlement agreement with Dell), P-425 (Oracle), P-437 (Xerox), P-439 (Software AG), P-812 (National Bureau of Credit Histories), P-810 (EDS), P-430 (US Bank NA/New Stone Ventures, LLC), P-767 (same), P-427 (Aetna Health Management/Aetna Life Insurance Co.), and P-803 (same). (*Id.* at 1.) FICO does not object to the exclusion of these settlement agreements so long as the exclusion of evidence related to FICO’s settlement agreements works both ways. If the settlement agreements are irrelevant, confusing, and unfairly prejudicial for FICO to reference, then the same agreements are irrelevant, confusing, and unfairly prejudicial for Defendants to reference.

Despite Defendants' motion to exclude, Defendants' damages expert, Christopher Bakewell, opines extensively on FICO's settlement negotiations and agreements with Sun Microsystems Technology, Ltd./Oracle and Dell/EMC Corporation (*see* P-457 (Bakewell Report), ¶¶ 50, 72-102) and Symantec Corporation/Broadcom Inc./Accenture (*see* P-817 (Bakewell Supplemental Report), ¶¶ 5-8). Defendants' concession that these settlement agreements are irrelevant, confusing, and unfairly prejudicial necessarily further concedes that all testimony about them and any negotiations related to them suffers the same deficiencies and must also be excluded. (*See* Dkt. 1086.) Defendants cannot have it both ways.¹

CONCLUSION

FICO does not object to the exclusion of the identified FICO settlement agreements, but exclusion is a two-way street. Defendants must also be prohibited from eliciting testimony, including from its damages expert Christopher Bakewell, regarding FICO's settlement negotiations and settlement agreements.

¹ Defendants may also try and raise these issues with FICO's witnesses Thomas Carretta, former Vice President Legal and Deputy General Counsel at FICO, and William Waid, Chief Product & Technology Officer at FICO. Such questioning would be improper for the same reasons.

MERCHANT & GOULD P.C.

DATE: February 21, 2023

/s/ Heather Kliebenstein

Allen Hinderaker, MN Bar # 45787

Heather Kliebenstein, MN Bar # 337419

Paige S. Stradley, MN Bar #393432

Michael A. Erbele, MN Bar # 393635

Joseph Dubis, MN Bar # 0398344

Gabrielle L. Kiefer, MN Bar # 0402364

MERCHANT & GOULD P.C.

150 South Fifth Street

Suite 2200

Minneapolis, MN 55402

Tel: (612) 332-5300

Fax: (612) 332-9081

ahinderaker@merchantgould.com

hkliebenstein@merchantgould.com

pstradley@merchantgould.com

merbele@merchantgould.com

jdubis@merchantgould.com

gkiefer@merchantgould.com